

Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
Library of Congress  
Washington, D.C.

*In re*

Determination of Royalty Rates and Terms  
for Making and Distributing  
Phonorecords  
(Phonorecords IV)

Docket No. 21-CRB-0001-PR  
(2023–2027)

**GEORGE JOHNSON WRITTEN TESTIMONY**  
**FOR WRITTEN DIRECT STATEMENT**

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*George D. Johnson (GEO), an individual  
songwriter and music publisher d.b.a.  
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(formerly BMI)*

Friday, October 15, 2021

**G. EXPERT AND FACT WITNESSES TESTIMONY**

Pursuant to Federal Rules of Evidence 702, GEO, George Johnson, would like to offer himself as an Expert and Fact Witness in songwriting and sound recording in *Phonorecords IV*.

GEO was deemed an expert in songwriting<sup>1</sup> by the CRB in *Phonorecords III* and expert in sound recording<sup>2</sup> in SDARS III.

GEO's written direct statement includes the written direct testimony of the following expert and fact witnesses:

Witness or Expert	Title	Contact Information
George Johnson - GEO	songwriter, publisher and sound recording creator	see Certification for contact info

GEO's contact information is available throughout this WDS if needed.

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<sup>1</sup> See GEO's Designated Testimony GEO - DT1 - Transcript 3-9-2017 *Phonorecords III* hearing, Pages 419 and 420, where GEO was deemed an expert in songwriting by the CRB.

<sup>2</sup> In SDARS III, GEO was also deemed an expert in sound recording and one other area but unfortunately I cannot find the transcript at this time.

## A. Expert Witnesses

George Johnson (“GEO”) is an individual singer, songwriter, self-publisher, investor and sound recording copyright creator d/b/a as George Johnson Music Publishing (“GJMP”) (formerly BMI) and Geo Music Group (“GMG”), an independent record label that specializes in the production of analog and digital sound recordings for terrestrial radio broadcast, internet radio, digital non-subscription and subscription streaming services, retail, video synchronization for film, television, advertising, and other music licensees.

GEO is a creator, owner and possessor of §115 musical works and §114 sound recording copyrights over the past 30 years

GEO is also the creator and possessor of animation copyrights. GEO has a background in Visual Arts (VA) copyright creation in animation, co-writing and co-creating an animated cartoon for Hanna-Barbara and The Turner Cartoon Network in 1993 called “Shake & Flick”<sup>3</sup>.

GEO has operated for 7 years in Los Angeles and the past 25 years on historic Music Row in Nashville Tennessee and has created and invested in master digital sound recordings with performances by legendary artists such as The Jordanairens and The Memphis Horns while hiring Nashville’s best “A-team” session musicians through the American Federation of Musicians (“AFM”) and the American Federation of Television and Radio Artists (“AFTRA”). GEO was a 15

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<sup>3</sup> <https://www.youtube.com/watch?v=88gVSzkh6Gs> Shake and Flick, What A Cartoon Show, Turner Broadcasting, The Cartoon Network, June 18, 1995.

year Grammy member and voting member and has written songs with legendary songwriters Dewayne Blackwell, Max D. Barnes, and Larry Henley as well as other #1 hit songwriters in Nashville and Los Angeles. GEO looks to expand his business models, relying on the longstanding constitutional protections afforded to each and every individual American creator by the *exclusive right* found in the “copyright clause”, Article 1, Section 8, Clause 8<sup>4</sup> of the United States Constitution and Section §106 of the Copyright Act.

Mr. Johnson’s anticipated testimony will explain why GEO’s proposed rates and rate structures are the most appropriate and reasonable from a copyright creator and music industry perspective, and therefore the public good.

GEO will also demonstrate the negative effects that *legal* compulsory licensing at confiscatory statutory rates of zero have on music creators, while only benefitting Licensees and a few others. The digital era has literally decimated the majority of American music copyright creators’ business models and profits the past 20 years, while Licensees’s businesses have boomed the past 20 years. Yet, despite copyright law being the supreme law of the land and a copyright business model that has lasted over two hundred years, Licensees still protest that their relatively new business model is the *only* business model that matters, or is effected, and this is untrue. A sales and access model must be combined for songwriters to survive.

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<sup>4</sup> [http://avalon.law.yale.edu/18th\\_century/fed43.asp](http://avalon.law.yale.edu/18th_century/fed43.asp) "The utility of this power (copyright) *will scarcely be questioned. The copyright of authors has been solemnly adjudged, in Great Britain, to be a right of common law. The right to useful inventions seems with equal reason to belong to the inventors. The public good fully coincides in both cases with the claims of individuals.* The States cannot separately make effectual provisions for either of the cases, and most of them have anticipated the decision of this point, by laws passed at the instance of Congress.” —James Madison, Federalist 43

## B. Fact Witnesses

George Johnson's anticipated testimony will provides background and information about how GEO individually, and colleagues on Music Row and throughout America, have been adversely affected by federal central economic planning and price-fixing of U.S. music royalty rates for musical works.

GEO will discuss why it is vitally important to factor in the true value of music copyrights and CPI inflation for grandfathered phonorecord rates for music.

Tragically, streamers and music licensees in this proceeding are calling for the current statutory licensing system to remain in place, as is, without any rate changes, except to lower the rate from \$.00 to less than \$.00.

GEO will also likely testify regarding the benefits to the industry of a streamlined and transparent rate structure for interactive streaming coupled with permanent downloads via a BUY button.

“Simple can be harder than complex, *but it's worth it in the end because once you get there, you can move mountains.*”<sup>5</sup> — Apple founder Steve Jobs

“*We agree 100 percent with artists that they should have the right to decide where their content is available — whether it's free or when it's free, when it should be paid or how much it should cost.*” — Eddy Cue, an Apple senior vice president<sup>6</sup>

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<sup>5</sup> <http://www.billboard.com/articles/business/7439042/apple-simplified-statutory-licensing-proposal-copyright-royalty-board>

Apple Proposes Simplified Statutory Licensing Scheme to D.C. 7/15/2016 by Robert Levine

<sup>6</sup> [http://www.nytimes.com/2016/07/16/business/media/apple-in-seeming-jab-at-spotify-proposes-simpler-songwriting-royalties.html?rref=collection%2Ftimestopic%2FApple%20Inc.&action=click&contentCollection=business&region=stream&module=stream\\_unit&version=latest&contentPlacement=1&pgtype=collection](http://www.nytimes.com/2016/07/16/business/media/apple-in-seeming-jab-at-spotify-proposes-simpler-songwriting-royalties.html?rref=collection%2Ftimestopic%2FApple%20Inc.&action=click&contentCollection=business&region=stream&module=stream_unit&version=latest&contentPlacement=1&pgtype=collection) Apple, in Seeming Jab at Spotify, Proposes Simpler Songwriting Royalties by Ben Sisaro July 15, 2016

GEO agrees 100 percent with these two Apple quotes that simplicity is worth it, can move mountains, and that *the artists have the right to decide how much their content should cost*.

The evidence, along with common sense, will prove that GEO's rates and terms are the most reasonable in 2021 going forward and must be adopted since the streamers' economic model leaves out one crucial element - *the customer*.

Customers, like all other products in the real world and using sound free-market economics, must pay for the "cost of copyright creation" as GEO presented to Judge Strickler in *Web IV*. This is a primary question in this rate proceeding: is it *reasonable for a customer to pay for the cost of goods sold*, in this case the songwriter's costs, according to his or her business model and real word economics?

Or is all that matters is Spotify gets its \$9.99 a month from the "customer"?

"The industry can't be *pacified by lip service* about efforts to create paid subscription services."<sup>7</sup> — Irving Azoff

Pursuant to 37 C.F.R. § 351(b)(3) GEO reserves the right to modify and amend his witness lists and proposed rates and terms at any time during the proceeding, up to, and including, the filing of the proposed findings of fact and conclusions of law. GEO thanks Your Honors for your thoughtful consideration on behalf of myself and *all* American songwriters and music publishers.

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<sup>7</sup> <http://www.billboard.com/articles/business/7356794/youtube-criticism-labels-artists-managers-payouts> 5/5/2016 by Robert Levine 'It's a System That Is Rigged Against the Artists': The War Against YouTube.

**SUMMARY OF THE WRITTEN TESTIMONY OF GEORGE JOHNSON**

In the following Testimony, George Johnson (“GEO”) presents evidence and arguments in support of his Written Direct Statement and several proposals for rates and terms.

As a pro se Participant GEO respectfully requests that the following Testimony be considered part of GEO’s rates and terms in my Written Direct Statement submitted on October 13, 2021.

GEO’s Testimony is intended to give the Panel first hand experience and industry knowledge as a songwriter, publisher, singer, sound recording creator, cartoon creator and copyright creator in general over the past 35 years.

The following Testimony also includes my experience and knowledge on the music business side as well as the creative side.

GEO’s Testimony also includes my experience and evidence collected as a Participant in 3 previous CRB rate proceeding and 2 appeals to the DC Circuit.

Most importantly, GEO Testimony includes what kinds of rate structures and royalty rates are actually “reasonable” *to me* as a songwriter, but also as a real world, practical “incentive” (as per copyright) to me as a songwriter and person.

But default, this translates into *all other* American songwriters getting the long overdue financial benefit of what rate is chosen in this proceeding and that is all that really matters. The Services aren’t going out of business and have run the table for 20 years. It’s time to actually help the songwriters with a real rate structure that creates profit for us *for once*, and *pays in dollars not nano-pennies*.

**TESTIMONY OF SONGWRITER GEORGE JOHNSON**

The following evidence demonstrates that national monetary inflation is very real and has been hurting American songwriters for over 111 years. Inflation effects songwriters just like every other American and I pray Your Honors will adjust the 9.1 cent mechanical for 84 years of lost inflation from 1909 to 1978 and 2006 to the present using the Consumer Price Index (“CPI”), and then CPI adjusted going forward just like the Panel determined in the recent *Web V*.

The rate for commercial subscription services in 2021 is **\$0.0026 per performance**. The rate for commercial nonsubscription services in 2021 is **\$0.0021 per performance**. The rates for the period 2022 through 2025 for both subscription and nonsubscription services shall be adjusted to reflect the increases or decreases, if any, in the general price level, as measured by the change in the Consumer Price Index for All Urban Consumers (U.S. City Average, all items) (CPI-U) from that published by the Bureau of Labor Statistics (BLS) in November 2020, as set forth in the regulations adopted by this determination. (emphasis added)

I read my older WDS from *Phonorecords III* and it was especially horrible and not a good WDS at all. I also didn’t do a good job of formally asking the CRB for an inflation increase and to adjust for the CPI going forward.

Not that this new submission is any better, but I do hope and pray that I get enough right, and do a better job of asking for an inflation increase in this WDS here in *Phonorecords IV*, that Your Honors can finally rule in favor of a lost inflation adjustment for the 9.1 cent mechanical and a CPI increase going forward, just like the one SoundExchange asked for in *Web V* and was granted.

## INFLATION

GEO and other songwriter groups during the Comments period respectfully requested that the Panel adjust the 9.1 cent mechanical rate, for 69 years of unrecognized inflation<sup>8</sup> from 1909 to 1978, 2006 to the present and going forward using the CPI just like in the most recent *Web V* determination.

The lost inflation is self-evident<sup>9</sup> and easily calculated by any government economist to around 56 cents per mechanical in 2021.

GEO offers a graduated increase over 5 years, but now understands that the new willing buyer, willing seller standard allows for an immediate increase. GEO does not want to shock or disrupt the market, so any graduated increase or how to implement the adjustment to 56 cents would, of course, be up to Your Honors.

The 9.1 cent rate set in 2006 was not raised for inflation in *Phonorecords I, II*, or *III*, and that is pretty incredible to me.

The rate has been not raised for any other reason.

All the numbers, data and statistics I provide on government inflation are readily available to the CRB at the Bureau of Labor Statistics or St. Louis Federal Reserve and other government departments<sup>10</sup>. I understand that these statistics are considered to be true and accurate in these rate proceedings by virtue of them being calculated and published by another federal governing agency.

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<sup>8</sup> <https://data.bls.gov/cgi-bin/cpicalc.pl> Government inflation calculator

<sup>9</sup> <https://www.copyright.gov/licensing/m200a.pdf>

<sup>10</sup> <https://www.bea.gov/news/2021/personal-income-and-outlays-june-2021-and-annual-update>

Current government inflation of 5.4 cents is common knowledge, on every mainstream news outlet, and well known in the public domain.

Plus, people can feel inflation and it's an economic principle everyone grasps.

If it is possible for the Panel to stipulate inflation as being real and accurate, I would respectfully request that please be done. Inflation isn't going away anytime soon in my opinion and in the opinion of many respected economists on both sides.

Austin, Texas music attorney Mr. Chris Castle, who also recently posted a series of Comments<sup>11</sup> along with songwriter groups<sup>12 13</sup>, has been a longtime author and expert on music copyright issues, including the 9.1 cent frozen mechanical.<sup>14</sup>

He recently posted a series of great articles (two already included in my Exhibits as GEO 4<sup>15</sup> named, *Frozen Mechanicals*, and GEO 24) on the frozen mechanical issue and this latest article explains the economics better than I can. Here are links to several other articles on the frozen mechanical by Mr. Castle.<sup>16 17</sup>

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<sup>11</sup> <https://thetrichordist.com/2021/08/16/frozenmechanicals-crisis-unfiled-supplemental-comments-of-helienne-lindvall-davidclowery-theblakemorgan-and-sealeinthedeal/>

<sup>12</sup> <https://musictechpolicy.com/2021/07/30/frozenmechanicals-crisis-comments-to-crb-by-twelve-international-songwriter-groups-opposing-frozen-mechanicals/>

<sup>13</sup> <https://musictechpolicy.com/2021/05/24/thetrichordist-coalition-of-songwriter-groups-call-on-copyright-royalty-board-for-fairness-and-transparency-on-frozen-mechanicals/>

<sup>14</sup> <https://musictechpolicy.com/2021/05/09/thetrichordist-will-the-copyright-royalty-board-leave-songwriters-in-the-deep-freeze/>

<sup>15</sup> <https://musictechpolicy.com/2021/10/10/why-songwriters-should-care-about-inflation-protection-for-mechanical-licenses/> by attorney Mr. Chris Castle.

<sup>16</sup> <https://musictechpolicy.com/2021/10/13/less-than-zero-crb-should-index-song-rates-irespectmusic/>

<sup>17</sup> <https://musictechpolicy.com/2021/06/13/the-copyright-royalty-board-gets-it-right-new-increased-inflation-adjusted-royalty-rates-for-webcasting/>

Inflation is real and here now in 2021 and called the “hidden tax” for good reason. Inflation cannot be ignored going forward.

### **ADJUSTING 9.1 CENTS TO 56 CENTS IN 2021**

Regarding raising the 9.1 cents to 50 cents for lost inflation, even Appellant David Israelite of NMPA says the 9.1 cent should be 50 cents in 2016. "At that time (1909), the rate was two cents. Now it is only nine cents. Adjusted for inflation it should be 50 cents today. This is the result of government interference.”<sup>18</sup>

Even former Counsel for the U.S. Copyright Office, Ms. Jacqueline Charlesworth, said in an *Amicus Brief* for *Johnson v. Copyright Royalty Board*, 969 F.3d 363 (D.C. Cir. 2020) that “the original 2-cent rate established by Congress...has risen to only 9.1 cents, which is well below the 50-plus cent rate that would apply today if adjusted for inflation.”<sup>19</sup> So, GEO’s 9.1 cent argument is well grounded.

In addition to the most recent *Web V* determination, including an automatic CPI inflation increase going forward, The Panel also has a long history of §115 mechanical rate inflation adjustment precedent<sup>20</sup> tied to the CPI from 1978 to 2006.

Additionally, under §805(3) the “General rule for voluntarily negotiated agreements”, when applicable, the code even states “the Copyright Royalty Judges *shall adjust the rates...to reflect national monetary inflation...*” (emphasis added)

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<sup>18</sup> David Israelite, Forbes, March 18, 2016, <https://www.forbes.com/sites/realspin/2016/03/18/regulations-are-killing-the-songwriting-stars/?sh=575f32f1364d>, GEO argues by NMPA interference.

<sup>19</sup> - *Amici Curiae* by Jennine Nwoko and Jacqueline Charlesworth. *Johnson v. Copyright Royalty Board*, 969 F.3d 363 (D.C. Cir. 2020)

<sup>20</sup> <https://copyright.gov/licensing/m200a.pdf> U.S. Copyright Office website, Mechanical License Royalty Rates from 1909 to 2006 adjusted for CPI inflation by the Copyright Office.

# Mechanical License Royalty Rates

DATE	RATE	AUTHORITY
1909-1977	2 cents	Copyright Act of 1909
January 1, 1978	2.75 cents or 0.5 cent per minute of playing time or fraction thereof, whichever is greater	Copyright Act of 1976
January 1, 1981	4 cents or 0.75 cent per minute of playing time or fraction thereof, whichever is greater	1980 Mechanical Rate Adjustment Proceeding
January 1, 1983	4.25 cents or 0.8 cent per minute of playing time or fraction thereof, whichever is greater	1980 Mechanical Rate Adjustment Proceeding
July 1, 1984	4.5 cents or 0.85 cent per minute of playing time or fraction thereof, whichever is greater	1980 Mechanical Rate Adjustment Proceeding
January 1, 1986	5 cents or 0.95 cent per minute of playing time or fraction thereof, whichever is greater	1980 Mechanical Rate Adjustment Proceeding
January 1, 1988 to December 31, 1989	5.25 cents or 1 cent per minute of playing time or fraction thereof, whichever is greater	17 U.S.C. 801 (b)(1) and 804. Based upon the change in the Consumer Price Index from Dec. 1985 to Sept. 1987
January 1, 1990 to December 31, 1991	5.7 cents or 1.1 cents per minute of playing time or fraction thereof, whichever is greater	Consumer Price Index from Sept. 1987 to Sept. 1989
January 1, 1992 to December 31, 1993	6.25 cents or 1.2 cents per minute of playing time or fraction thereof, whichever is greater	Consumer Price Index from Sept. 1989 to Sept. 1991

GEO Exhibits 1, 2, and 3 from the Copyright Office website.

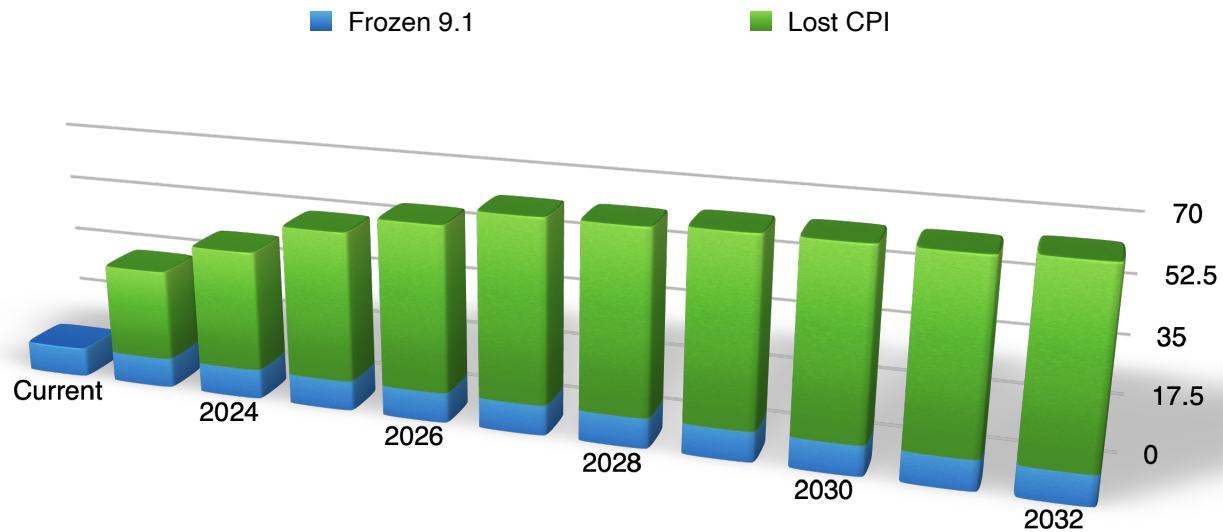
January 1, 1994 to December 31, 1995	6.60 cents or 1.25 cents per minute of playing time or fraction thereof, whichever is greater	Consumer Price Index from Sept. 1991 to Sept. 1993
January 1, 1996 to December 31, 1997	6.95 cents or 1.3 cents per minute of playing time or fraction thereof, whichever is greater	Consumer Price Index from Sept. 1993 to Sept. 1995
January 1, 1998 to December 31, 1999	7.1 cents or 1.35 cents per minute of playing time or fraction thereof, whichever is greater	1997 Mechanical Rate Adjustment Proceeding
January 1, 2000 to December 31, 2001	7.55 cents or 1.45 cents per minute of playing time or fraction thereof, whichever is greater	1997 Mechanical Rate Adjustment Proceeding
January 1, 2002 to December 31, 2003	8.0 cents or 1.55 cents per minute of playing time or fraction thereof, whichever is greater	1997 Mechanical Rate Adjustment Proceeding
January 1, 2004 to December 31, 2005	8.5 cents or 1.65 cents per minute of playing time or fraction thereof, whichever is greater	1997 Mechanical Rate Adjustment Proceeding
January 1, 2006 to February 28, 2009	9.1 cents or 1.75 cents per minute of playing time or fraction thereof, whichever is greater	1997 Mechanical Rate Adjustment Proceeding

**GEO'S 9.1 CENT INFLATION ADJUSTMENT OVER 5 YEARS (10)**

The following charts are an estimate of a graduated increase from 9.1 cents to 56 cents over 5 years, then leveling off in 2028 with yearly CPI inflation thru 2032.

	Current	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
<b>Frozen 9.1</b>	9.1	9.1	9.1	9.1	9.1	9.1	9.1	9.1	9.1	9.1	9.1
<b>CPI Increase</b>	0	28	37	46	51	56	56	57	57	57	58

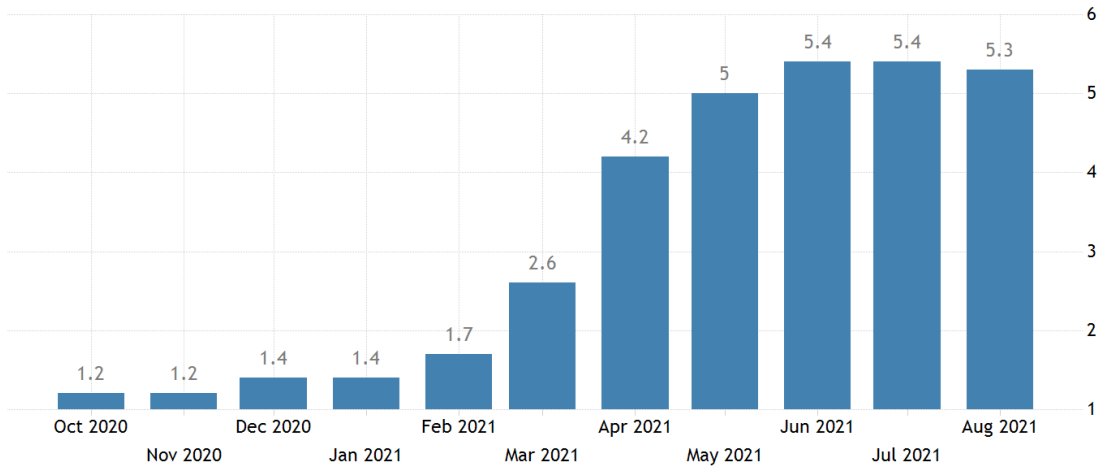
GEO 51 Exhibit



## United States Inflation Rate

Summary Calendar Forecast Stats Download ▾ Alerts

1Y 5Y 10Y 25Y MAX Chart Compare Export API Embed



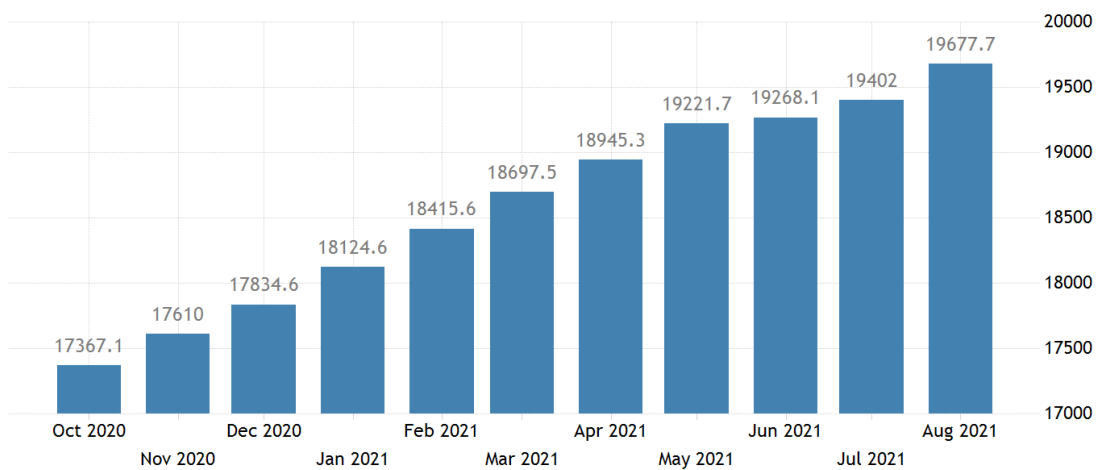
SOURCE: TRADINGECONOMICS.COM | U.S. BUREAU OF LABOR STATISTICS

GEO 19 Exhibit above. Money Supply not in evidence at this time.

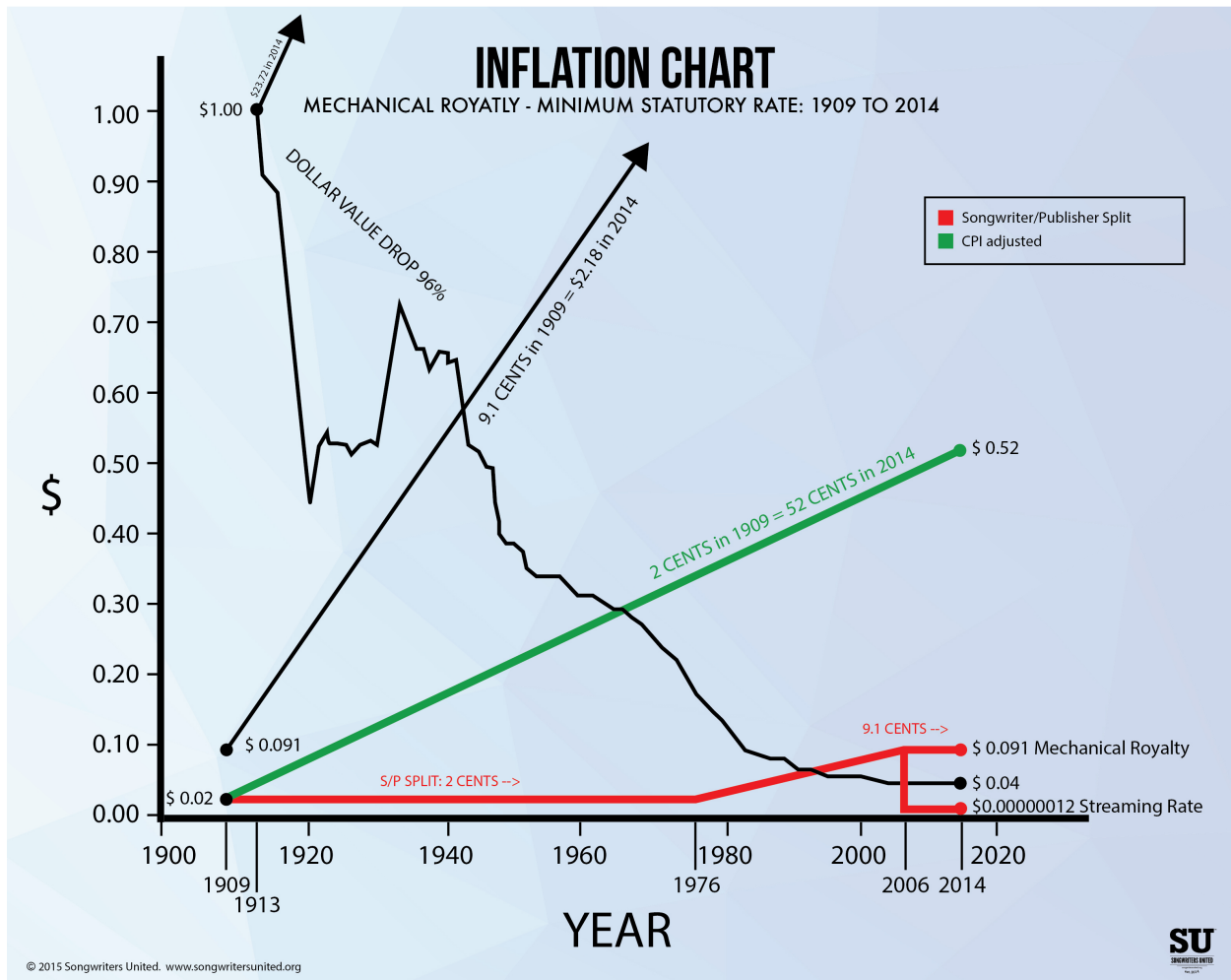
## United States Money Supply M1

Summary Stats Download ▾

1Y 5Y 10Y 25Y MAX Chart Compare Export API Embed

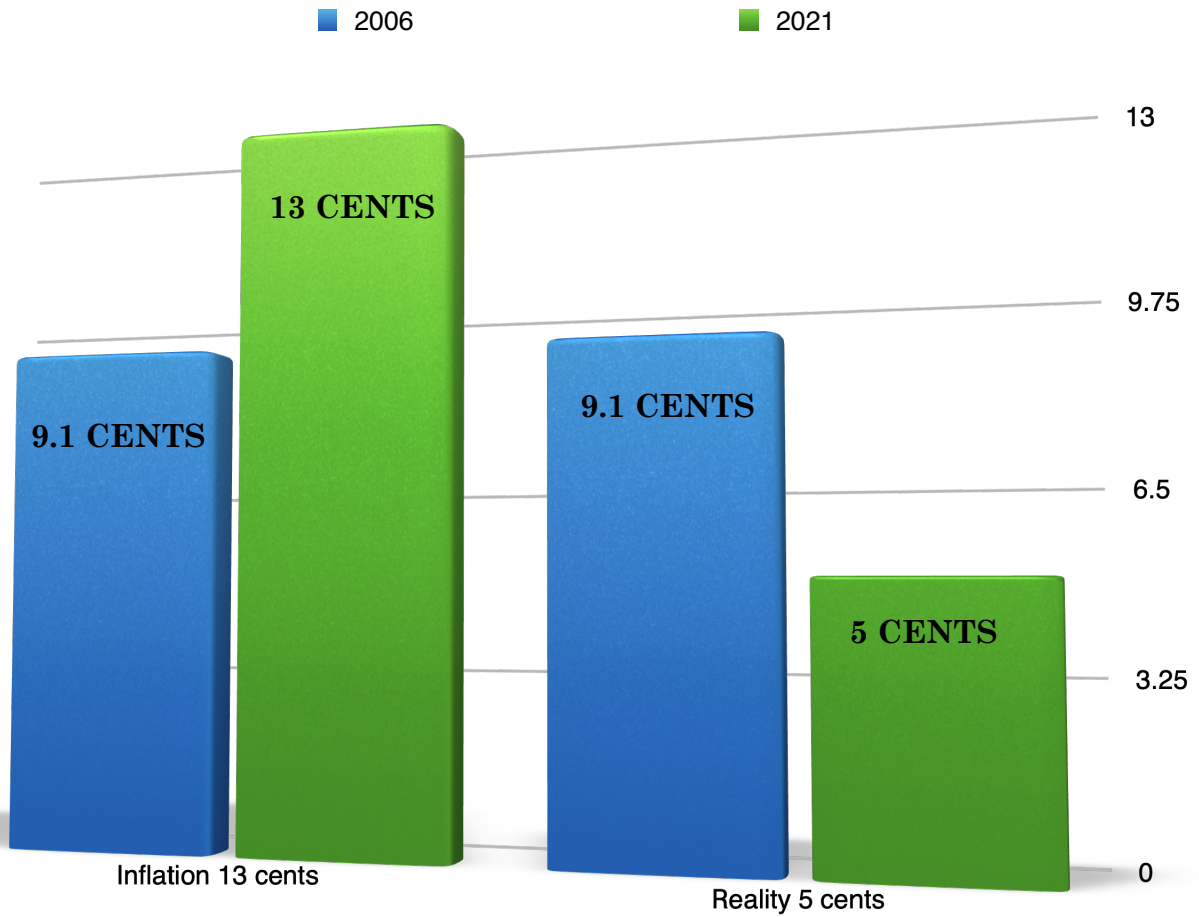


SOURCE: TRADINGECONOMICS.COM | FEDERAL RESERVE



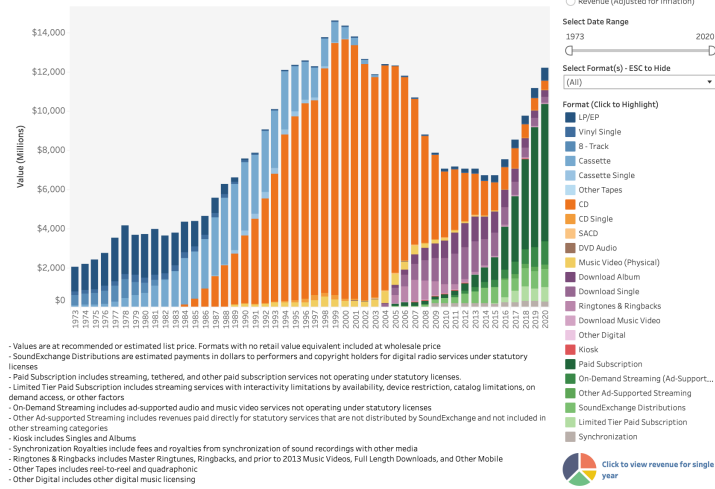
GEO 5 - Inflation chart for Mechanical Royalty from 1909 to 2014 by GEO.

**9.1 CENTS FROM 2006 SHOULD BE 13 CENTS BUT IS 5 CENTS IN 2021**



## U.S. Recorded Music Revenues by Format

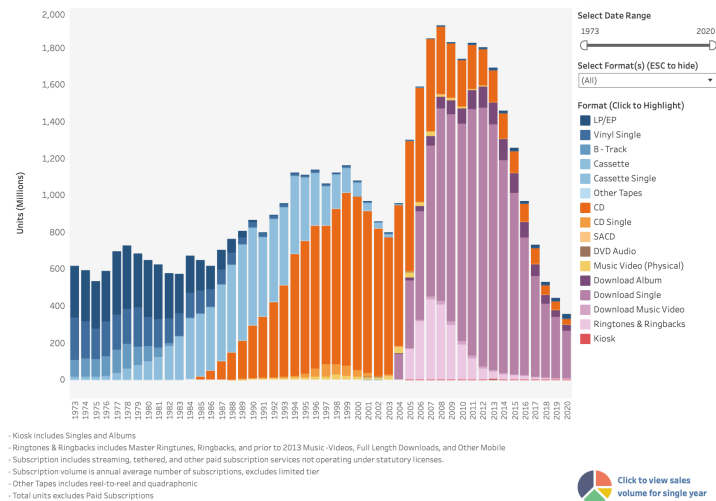
1973 to 2020, Format(s): All  
Source: RIAA

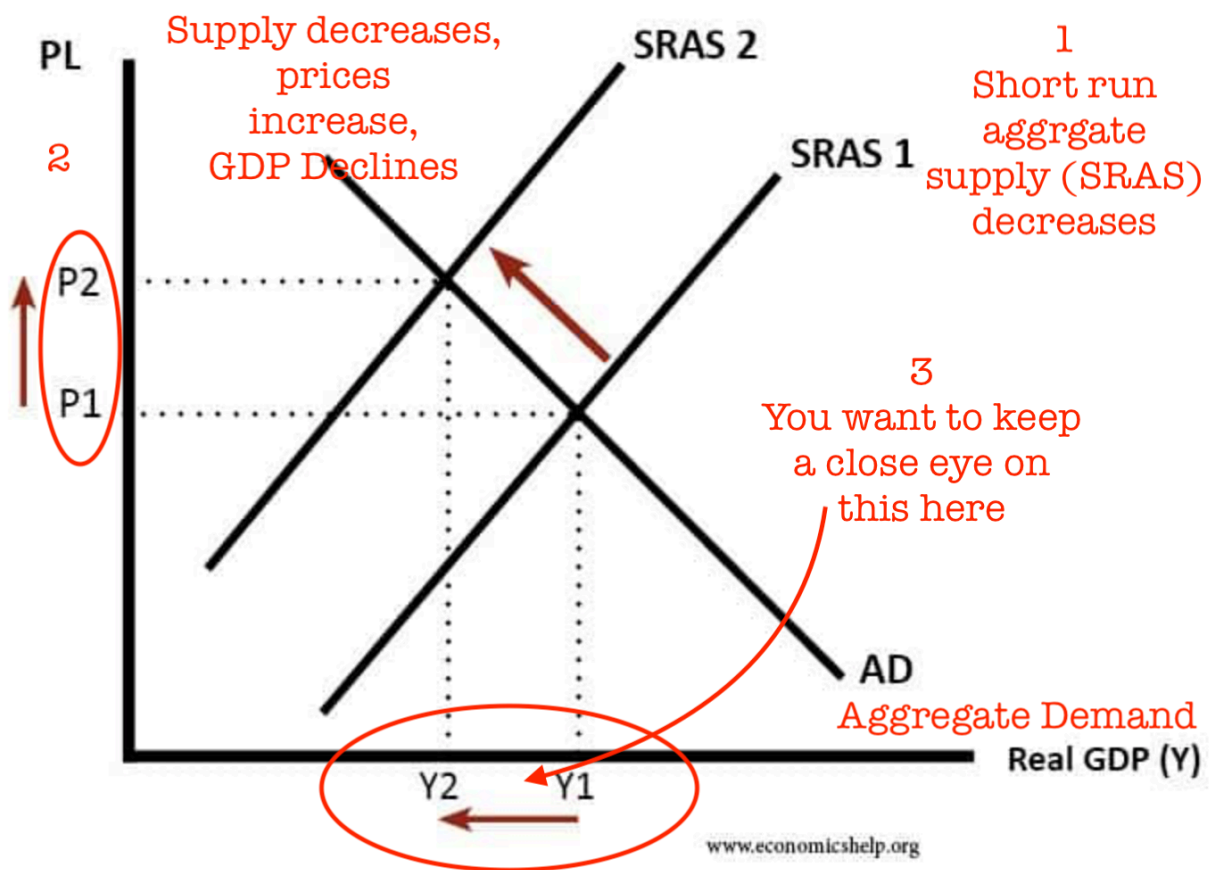


GEO Exhibits on Music Revenues by Format, not in evidence at this time.

## U.S. Recorded Music Sales Volumes by Format

1973 to 2020, Format(s): All  
Source: RIAA





GEO Exhibit on inflation, not in evidence at this time

### CPI Inflation Calculator

\$

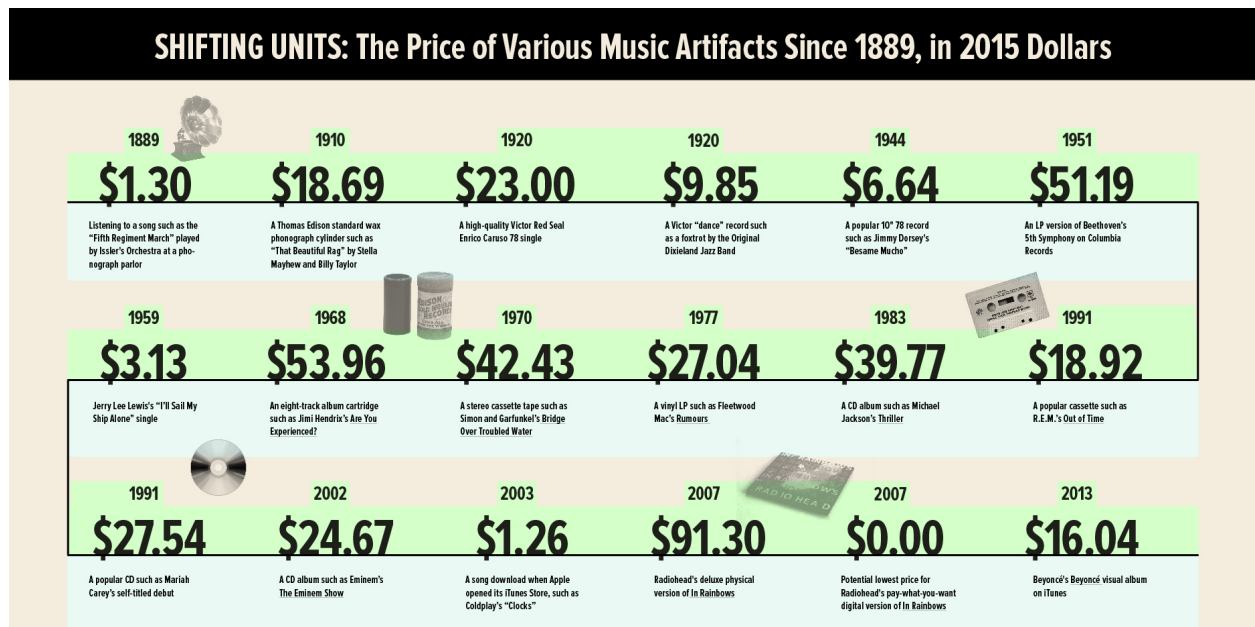
in

has the same buying power as

**\$0.56**

in

GEO 23 Exhibit, BLS Inflation Calculator  
2 cents in 1913 is now 56 cents in 2021



GEO 6 Exhibit, RIAA using inflation to adjust historical values of songs.

**THE DOJ ON THE COMPULSORY LICENSE**

Former Department of Justice (“DOJ”) Assistant Attorney General Makan Delrahim gave remarks to the Vanderbilt Law School on January 15, 2021. I’ve included a few of his remarks because they are some of the most important words this Panel can read concerning the importance of property rights in copyright.

His words are also equally important on how the compulsory license has no place in music and “eviscerates essential aspects of the right to exclude”, and one of the many reasons I believe the compulsory license to be unconstitutional — an obligation this Panel has to uphold, yet would abolish the CRB if upheld.

While the CRB runs on simulating a free market, Mr. Delrahim words could not be more true, “Compulsory licensing, however, does not permit this sort of market-based negotiation—quite the opposite.”

I include this since the Panel says it’s hands are tied and there is nothing they can do about the compulsory license unless Congress acts, but as Mr. Delrahim states, “It is incumbent upon the Division, the Congress, and the courts to keep these principles in mind as they strive to ensure a free, fair, and competitive music licensing marketplace.”

I hope Your Honors give these words some thought.

“The third principle that should guide any future review of the ASCAP and BMI consent decrees, as well as the Division’s—and Congress’s—efforts with regard to music licensing more generally, is the recognition that compulsory licensing is not the answer. In the early days of the music industry, some observers worried that without compulsory licensing, the nascent industry would not survive. They feared that large, corporate interests would use exclusive licensing arrangements to tie up distribution channels, exclude new market

entrants, and prevent consumers from accessing the full range of available works. Too often, however, it has been creators—songwriters, artists, and other rights holders—who have received the short end of the stick under compulsory licensing, necessitating reforms like the recent Music Modernization Act, by Congress.”

“Compulsory licensing also runs counter to the principles that form the very foundation of the free market and rights in intellectual property. Those principles hold that the best, most efficient way to allocate resources—and the most effective way to maximize consumer welfare—is through allowing parties to negotiate, to set prices based on supply, demand, and available information. Antitrust law serves as a crucial backstop when market conditions become distorted or when industry actors attempt to stifle the free and full exchange of goods. Compulsory licensing, however, does not permit this sort of market-based negotiation—quite the opposite.”

“Similarly, chief among basic property rights, including intellectual property rights, is the right to exclude, to determine who may or may not use your property. It is this right to exclude that gives property its value, and that enables property holders to negotiate over use rights. Compulsory licensing eviscerates essential aspects of the right to exclude. It transfers the power to set rates—to determine when property may be used or exploited by a non-rights holder—to a third party. That third party may be seeking to act in the public interest, but it is not the rights holder, and the two entities’ goals may be in conflict. For this reason, compulsory licensing in the United States is the exception—the rare exception—not the rule, and our representatives seek to avoid compulsory licensing requirements in agreements with other countries.”

“It is incumbent upon the Division, the Congress, and the courts to keep these principles in mind as they strive to ensure a free, fair, and competitive music licensing marketplace.”<sup>21</sup>

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<sup>21</sup> <https://www.justice.gov/opa/speech/remarks-assistant-attorney-general-makan-delrahim-future-ascap-and-bmi-consent-decrees> Assistant Attorney General Makan Delrahim, January 15, 2021 “And the Beat Goes On” 1: The Future of the ASCAP/BMI Consent Decrees, Remarks as Prepared for Delivery, Virtual Event Hosted by Vanderbilt University Law School

**EVIDENCE**

After participating in *Web IV* and *SDARS III*, it wasn't until the hearing in *Phonorecords III* that I first learned that *none of the evidence I offered in Phonorecords III* was admitted into the record.

After extensive motions by the Services and Replies by GEO, the CRB never told me or issued an order that *my evidence was not being accepted into the record*.

I also found out that *none of my evidence was accepted* when I was in *Web IV* and *SDARS III*.

This was astonishing to me that the CRB let me go through motion after motion defending each piece of evidence and never even let me know they were not accepting it into the record.

I would respectfully ask that the Panel allow my evidence into the record and if it thinks some evidence is not valid, then please let me know. I've tried to make my evidence as standard, and from accepted government sources, mainstream financial outlets, and evidence that is in the record or is public knowledge.

## THE LOSS OF MUSIC ROW

Nashville, Tennessee, has a world-famous district called Music Row. Music Row is a mile-long stretch of two one-way streets, 16th and 17th Avenue. The near-zero streaming rates adopted in *Phonorecords I* in 2006 have decimated songwriters throughout the nation, as seen by what’s happened on Music Row.

“Mechanical royalties have decreased and continue to decrease by an alarming rate. Many songwriters report a reduction of 60 to 70% or more. As streaming becomes more popular, sales and performance royalty income per songwriter continues to decline. Twenty years ago there were between 3 and 4 thousand music publishing deals available for songwriters in Nashville. Today there are somewhere between 3 and 4 hundred.”

Comments from Appellant Bart Herbison from “Music Licensing Study” Copyright Office, September 11, 2014. (citing figures derived by NSAI from Music Row Magazine Publisher’s Edition - 2000 to 2014.) (emphasis added)

Nowadays, when you hear the word “studio” on Music Row you are more likely to think the speaker is referring to an expensive “studio” apartment or yoga “studio” — not a recording studio.

GEO hopes the Panel can get a true sense of how small Music Row actually *was*, going from 3 to 4,000 publishing deals to 3 to 400, a 90% loss in songwriters and independent publishers, that must have caused by something, and \$.00 is why.

Other American copyright creators like painters, book authors, illustrators, journalists, and photographers are not compelled to work for free under a compulsory license, so why are *all* American songwriters?

While Congress may have passed the compulsory license into law in 1909, it doesn't mean that it's working for songwriters or is still the right thing to do after 111 years. Congress passes unconstitutional or ridiculous laws every year so while the Panels' hands may be tied regarding the compulsory license, if Your Honors could please minimize the effects on songwriters as much as possible to imagine what an actual free market would be like with no compulsory license and no forced mechanical floor or ceiling — and now under willing buyer, willing seller.

This loss of creators on Music Row is directly attributable to streaming rates intentionally being set at \$.000 cents per-stream in *Phonorecords I* 2006, which resulted in the cannibalization of 9.1 mechanical sales by streaming performances, and the CRB allowing unlimited free limited downloads.

To add insult to injury, *Phonorecords III* and now *IV* all but eliminates this 9.1 cent mechanical royalty. A mechanical license has been transmuted from a 9.1-cent sale into basically a \$.000 performance and with no sales or increase.

The practical reality...

That's gold for the Services. It's penury for the songwriters. It's nowhere close to what songwriters would charge in an actual free market in the real world.

**TESTIMONY OF SONGWRITER LIZ ROSE**

I was reading the testimony of the great songwriter Liz Rose who testified for NSAI in *Phonorecords III* and I was shocked that what she was asking for was exactly what I was asking for. I found it odd that Ms. Rose testified for things that NMPA and NSAI fought me in *Phonorecords III* and now *IV*. Mr. Rose wants to not be paid in micro-pennies anymore, streaming has cannibalized her sales, and she she say no more free unlimited downloads without pay. Pretty simple.

So why are NMPA and NSAI fighting me to to stop the exact same things their own songwriters testified to they want?

She is rightfully complaining of Spotify giving away 60 to 70 million songs in *Phonorecords III* and now in *Phonorecords IV*, yet *NMPA and NSAI are fighting me*, spending money on attorneys, to make sure Spotify continues to give away 60 to 70 million songs, downloads or unlimited plays for FREE. We pray this Panel will stop giving away our property for free and rule *sua sponte* that all downloads must be paid the 9.1 cents or whatever Your Honors decide to adjust the price to.

**WITNESS STATEMENT OF LIZ ROSE**

1. “My names is Liz Rose and I live in Nashville, Tennessee. I am a songwriter Liz Rose Music and Warner/Chappell Music. I write this statement to explain that everybody deserves to be fairly compensated for the value of their work. Songwriters are no different. However, unlike virtually everybody else, the songwriting profession is heavily regulated by the federal government and songwriters and their music publishers are forced by a hundred-year-old compulsory mechanical license to license their music to anyone who wants it at below-market rates that do not reflect the value of the product we create. Some of the largest companies in the world like Apple, Google, and Amazon, are paying us micro-pennies to stream our music while using our music to draw in more customers to buy more of their

smartphones and speaker systems. Spotify, which is worth billions of dollars, is still giving away our music for free to 60 or 70 million users..”

2. While more consumers are listening to more music than ever before, the songwriters who create the music are struggling to earn a decent living on the minuscule amounts the services pay on an enormous volume of streams. The situation is getting progressively worse as interactive streaming is also cannibalizing sales of albums and permanent digital downloads on which songwriters earn higher mechanical royalty rates. Music publishers are suffering, as well.”<sup>22</sup>

## CONCLUSION

In a recent series of editorials and interviews between song publisher Hipgnosis CEO Mr. Merck Mercuriadis and NMPA’s David Israelite, Mr. Mercuriadis described the problem perfectly, which prompted a guilty response from Mr. Israelite, claiming Mr. Mercuriadis was “dead wrong”, when in fact, Mr. Mercuriadis is exactly right.

Mr. Mercuriadis is saying the exact same thing I have been saying in this proceeding, that record labels control their publishing sides and therefore they keep the publishing side low, so record company profits are high. Furthermore, it is now evident these record companies are negotiating with themselves with no willing buyer or willing seller, which is also in violation of prong 2, *Same Parties*. He says:

“...why the songwriter was the lowest paid person in the music business – and the conclusion that I came to was that it was a result of the recorded music industry owning and controlling the publishing industry.”

“This paradigm has been allowed to exist for many decades, where the biggest publishing companies are not only owned but also controlled by the biggest recorded music companies of the same name.”

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<sup>22</sup> <https://app.crb.gov/document/download/12402>

“The recorded music side of the business today is getting 4/5ths of the revenue...Conversely, the publishing side of the business is getting 1/5th of the revenue”

“In that context it’s no wonder that the recorded music companies exercise their control over their publishing companies. It’s in their economic interest to push as much of the money in our business towards recorded music – where the lion’s share goes to the record company. And to be clear: it goes to the record company at the expense of the songwriter.”

— Hipgnosis CEO Mr. Merck Mercuriadis<sup>23 24</sup>

When a particular piece of music is created, it represents the unique and uniquely original conception of the musician and lyricist who created it. By contrast to inventions covered by patent law, copyright protects unique forms of property that would not exist but for that creator:

If Shakespeare had died as a child we should never have had Hamlet, but if Newton had died as a child we should certainly have calculus today. Of course, that is also the great advantage of science. Having seen the calculus, one can improve on it, but it is hard to imagine an improved Hamlet.

Paul Goldstein, The Future of Software Protection, 47 U. Pitt. L. Rev. 1119, 1123 (1986).

GEO thanks Your Honors and respectfully requests you deny NSAI and NMPA’s fraudulent settlement and adjust the 9.1 cent mechanical for lost inflation to 56 cents *sua sponte* if possible.

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<sup>23</sup> <https://www.musicweek.com/publishing/read/hipgnosis-founder-merck-mercuriadis-message-to-the-majors/084030>

<sup>24</sup> <https://www.musicweek.com/interviews/read/the-music-week-interview-merck-mercuriadis/083981>

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Friday, October 15, 2021

# Proof of Delivery

I hereby certify that on Sunday, October 17, 2021, I provided a true and correct copy of the GEORGE JOHNSON'S (GEO) WRITTEN DIRECT STATEMENT Testimony CORRECTED to the following:

Google LLC, represented by Gary R Greenstein, served via ESERVICE at gggreenstein@wsgr.com

Amazon.com Services LLC, represented by Joshua D Branson, served via ESERVICE at jbranson@kellogghansen.com

Spotify USA Inc., represented by Joseph Wetzel, served via ESERVICE at joe.wetzel@lw.com

Apple Inc., represented by Mary C Mazzello, served via ESERVICE at mary.mazzello@kirkland.com

Joint Record Company Participants, represented by Susan Chertkof, served via ESERVICE at susan.chertkof@riaa.com

Zisk, Brian, represented by Brian Zisk, served via ESERVICE at brianzisk@gmail.com

Pandora Media, LLC, represented by Benjamin E. Marks, served via ESERVICE at benjamin.marks@weil.com

Copyright Owners, represented by Benjamin K Semel, served via ESERVICE at Bsemel@pryorcashman.com

Powell, David, represented by David Powell, served via ESERVICE at davidpowell008@yahoo.com

Signed: /s/ George D Johnson